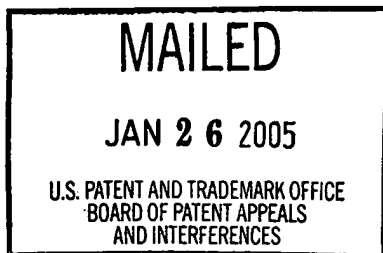


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE



BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DOUGLAS WALTER CONMY

Appeal No. 2004-1533
Application 09/100,223

HEARD: NOVEMBER 16, 2004

Before JERRY SMITH, BARRETT and RUGGIERO, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 1-39, which constitute all the claims in the application.

The disclosed invention pertains to a method and apparatus for scheduling time intervals for a plurality of invitees in a networked environment. A particular feature of the invention is that the user can select from three results viewing options including an option that displays the invitees which are

available, an option that displays invitees which are not available, and an option that displays invitees whose schedules could not be found.

Representative claim 1 is reproduced as follows:

1. A system for scheduling time intervals for a plurality of invitees in a networked environment comprising:

database means for storing one or more invitee profiles for one or more potential invitees of the system, the one or more invitee profiles comprising user profiles wherein each user profile comprises information regarding available and unavailable times for a corresponding user, the database means being located at one or more server locations;

request generating means, located remotely from the server locations, for generating a request for allocation of a time interval for the one or more potential invitees;

busy time determination means for gathering the invitee profiles for the one or more potential invitees and determining whether each of the one or more potential invitees is available during the time interval requested by the request generating means; and

graphical user interface means associated with the request generating means for displaying results from the busy time determination means, the graphical user interface means permitting the user to select from at least three results viewing options including a viewing option displaying the one or more potential invitees that are available, a viewing option displaying the one or more potential invitees that are not available and a viewing option displaying the one or more potential invitees whose schedule could not be found, and then displaying the results according to the viewing option selected.

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The examiner relies on the following references:

Hotaling et al. (Hotaling)	5,124,912	June 23, 1992
Tognazzini	5,790,974	Aug. 04, 1998
		(filed Apr. 29, 1996)

Claims 1-39 stand rejected under 35 U.S.C. § 103(a). As evidence of obviousness the examiner offers Hotaling taken alone with respect to claims 1, 4-6, 9-12, 15, 16 and 19-39, and Hotaling in view of Tognazzini with respect to claims 2, 3, 7, 8, 13, 14, 17 and 18.

Rather than repeat the arguments of appellant or the examiner, we make reference to the briefs and the answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejections advanced by the examiner and the evidence of obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellant's arguments set forth in the briefs along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

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It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would have suggested to one of ordinary skill in the art the obviousness of the invention as set forth in claims 1-39. Accordingly, we affirm.

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hosp. Sys., Inc. v. Montefiore

Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984).

These showings by the examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness.

Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444

(Fed. Cir. 1992). If that burden is met, the burden then shifts to the applicant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See Id.; In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976). Only those arguments actually made by appellant have been considered in this decision. Arguments which appellant could have made but chose not to make in the brief have not been considered and are deemed to be waived by appellant [see 37 CFR § 41.].

We consider first the rejection of claims 1, 4-6, 9-12, 15, 16 and 19-39 based on Hotaling taken alone. With respect to independent claims 1 and 5, which are grouped together by appellant [brief, pages 3-4], the examiner essentially finds that Hotaling teaches the claimed invention except that Hotaling does not teach selecting from three results viewing options as

claimed. The examiner takes "Official Notice" that it was well known to display filtered data based on a selected viewing option in the art of graphical user interfaces. The examiner finds that it would have been obvious to the artisan to selectively display the result options in Hotaling in the manner claimed [final rejection, pages 4-6, incorporated into answer at page 3].

Appellant argues that the examiner has not established that the selective display of three options feature is taught by Hotaling. Appellant argues that Hotaling does not teach presenting a view of a list of those whose schedule could not be found. Appellant asserts that the "NP" designation in Hotaling is not the same as a designation that indicates invitees whose schedules could not be found. Thus, appellant argues that Hotaling fails to teach a display of the third option recited in claim 1. Finally, appellant argues that the examiner's Official Notice does not make up for this deficiency in Hotaling [brief, pages 4-6].

The examiner responds that the "NP" designation in Hotaling is, in fact, the same as a designation that the invitee's schedule is unavailable because they do not participate in the meeting service [answer, page 4].

Appellant responds that the "could not be found" designation in the claimed invention may be a temporary designation that is reported until a schedule is located which is different from the "NP" designation in Hotaling. Appellant also responds that Hotaling fails to teach displaying alternate views and that the "Official Notice" fails to remedy this deficiency in Hotaling [reply brief, pages 2-7].

We will sustain the examiner's rejection of independent claims 1 and 5 for essentially the reasons argued by the examiner. With respect to appellant's argument that the "NP" designation in Hotaling is different from displaying the invitees whose schedules could not be found, we do not agree. As noted by the examiner, the "NP" designation is given to an invitee who does not participate in the notice system and, therefore, has no schedule posted on the network. Thus, a designation of "NP" in Figure 11 of Hotaling would indicate an invitee whose schedule could not be found. Appellant's argument that the designation may be temporary in the claimed invention refers to a feature not required by the claimed invention. With respect to the "Official Notice" argument, appellant only asserts that the Official Notice taken by the examiner does not overcome the deficiency in Hotaling with respect to the "NP" designation. Appellant never

does challenge the accuracy of the examiner's finding that it was well known to selectively display different result options based on filtered (or sorted) considerations. We agree with the examiner that the artisan familiar with managing databases was well versed in providing output displays based on different aspects of the database. Since we have found that Hotaling teaches displaying data representative of the three different options recited in claim 1, and since the obviousness analysis of the selective display feature has not been challenged by appellant on the merits, we find that the present record provides adequate support for the examiner's rejection.

With respect to independent claims 4 and 6, which are grouped together by appellant [brief, page 4], the examiner essentially makes the same findings discussed above with respect to claim 1. Although appellant nominally argues that these claims stand or fall separately from claim 1, appellant makes the same arguments we considered above with respect to claim 1 [brief, page 6]. Appellant also argues in the reply brief for the first time that the system of Hotaling, unlike the claimed invention, resides on a single server [page 7].

We will sustain the examiner's rejection of independent claims 4 and 6. With respect to those arguments which are the same arguments we considered above with respect to claim 1, these arguments have been decided adversely to appellant for reasons discussed above. With respect to the new argument made in the reply brief, independent claim 4 recites "one or more servers." Since "one or more servers" is met by a single server, appellant's argument that Hotaling teaches a single server system fails to overcome the rejection.

With respect to independent claims 25, 32 and 33, which are grouped together by appellant [brief, page 4], the examiner essentially makes the same findings discussed above with respect to claim 1. Although appellant nominally argues that these claims stand or fall separately from claim 1, appellant makes the same arguments we considered above with respect to claim 1 [brief, page 7]. Appellant also argues in the reply brief for the first time that the system of Hotaling, unlike the claimed invention, discloses displaying several columns of information associated with all the selected users [page 8].

We will sustain the examiner's rejection of independent claims 25, 32 and 33. With respect to those arguments which are the same arguments we considered above with respect to claim 1, these arguments have been decided adversely to appellant for reasons discussed above. With respect to the new argument made in the reply brief, we fail to see how that argument relates to the claimed invention and the findings made by the examiner.

In summary, we have sustained the examiner's rejection of each of independent claims 1, 4, 5, 6, 25, 32 and 33 based on the teachings of Hotaling taken alone. Since appellant has not argued any of the dependent claims which are also rejected on Hotaling taken alone, we sustain the rejection of these dependent claims for the same reasons discussed above with respect to the independent claims.

We now consider the rejection of claims 2, 3, 7, 8, 13, 14, 17 and 18 based on Hotaling and Tognazzini. Appellant's only argument with respect to this rejection is that Tognazzini does not overcome the deficiencies in Hotaling discussed above [brief, pages 7-8]. Since we have found that Hotaling is not deficient in supporting the examiner's rejection, this argument by appellant fails to overcome the rejection. Therefore, we sustain the examiner's rejection of claims 2, 3, 7, 8, 13, 14, 17 and 18.

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In summary, we have sustained each of the examiner's rejections of the claims on appeal. Therefore, the decision of the examiner rejecting claims 1-39 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

Jerry Smith
JERRY SMITH

JERRY SMITH
Administrative Patent Judge

Lee E. Barrett

LEE E. BARRETT
Administrative Patent Judge

Joseph F. Ruggie

JOSEPH F. RUGGIERO
Administrative Patent Judge

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